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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
JESSICA WHITE, No. 03-12674
Debtor(s).

Memorandum on Motion to Set Aside Conversion

Debtor Jessica White is an abusive bankruptcy filer, having filed three Chapter 13 bankruptcy petitions in the last three years without successful completion of any of them. She filed her current case on November 3, 2004, just seven days after her previous case was dismissed on the trustee’s motion because she had not made her plan payments.

It is clear that her goal in all three cases was to keep her real property in Cloverdale, California, despite her failure to make mortgage payments. Secured creditor Option 1 Mortgage Company filed stay relief motions in all three cases; Chase Manhattan Mortgage Company filed stay relief motions in this and the prior case. The motions alleged that White was not making her postpetition mortgage payments, a requirement of Chapter 13 debtors. *In re Gavia*, 24 B.R. 573, 575 (9th Cir.BAP 1982).

On June 8, 2004, White’s attorney converted the case to Chapter 7 by filing a notice of conversion pursuant to FRBP 1017(f)(3). Conversion was the only avenue open to White, as she had defaulted in her stipulations with the secured creditors and faced imminent foreclosure if a Chapter 7 trustee did not take steps to hold off the creditors and sell the property. On June 17, 2004, the court

1 served an order pursuant to the conversion on both White and her attorney.

2 The Chapter 7 trustee retained an attorney and a real estate broker. On June 24, 2004, he filed a
3 complaint against Option 1 Mortgage seeking additional time to market White's property and the next day
4 obtained a temporary restraining order. On July 1, 2004, the trustee filed a similar complaint against
5 Chase Manhattan Mortgage and obtained similar relief. Had he not taken these actions, the property
6 would have been lost to foreclosure. White had long since exhausted her good graces with the court, and
7 could not have obtained such relief on her own.

8 On July 6, 2004, almost a month after conversion and 19 days after service of the order upon
9 conversion, White made a motion to vacate the conversion on grounds that she never authorized her
10 attorney to convert the case. She did not seek a hearing before July 29, 2004, when the her motion came
11 before the court.

12 It is clear from the dockets in all three cases that White has been using the bankruptcy system to
13 "play for time," coached by her "*de facto* husband," whose dubious qualification for this role was his
14 own bankruptcy. White had authorized her "husband" to communicate with her lawyer for her, and the
15 conversion was the result of such a communication in which "husband," after a lengthy conversation, had
16 left White's attorney with the "firm belief" that conversion was White's wish.

17 White asks that the conversion be set aside on grounds that it was never authorized, but the court
18 does not believe this to be true. White was at the end of her options, and conversion was the only
19 possibility of avoiding foreclosure. Moreover, the motion was not filed until a month after conversion
20 and almost three weeks after White was informed of it directly by the court. If the conversion was not
21 authorized, an immediate motion would have been expected. It is far more likely that the delayed
22 commission White was hoping for finally came in, and White is therefore in a position to resume her
23 games with her secured creditors.

24 Even if the court believed White's story that the conversion was not authorized, it would still not
25 grant her motion because she did not act diligently and reaped the benefit of conversion. Where a client
26 has reaped the benefit of his attorney's acts or has not acted diligently to undo the act, the client is

1 estopped to contest the binding effect of the attorney's actions. *SEI Corp. v. Norton & Co.*, 631 F.Supp.
2 497 (E.D.Pa.1986); *In re Banks*, 225 B.R. 738, 748 (Bkrtcy. C.D.Cal. 1998); *Stockwell v. McAlvay*
3 (1937) 10 Cal.2d 368, 372-73.

4 The point of conversion was the hope that the Chapter 7 trustee would be able to forestall the
5 foreclosures, and that is exactly what happened. If the court were to grant the motion and allow White to
6 go back to Chapter 13, it would be allowing White to have the benefits of conversion to Chapter 7
7 without the associated obligations to deal fairly with her creditors. Her failure to immediately inform
8 the court and her creditors of the supposed mistake is fatal to her motion.

9 For the foregoing reasons, White's motion will be denied and the case shall remain in Chapter 7.
10 Counsel for the trustee shall submit an appropriate form of order.

11
12 Dated: August 9, 2004


Alan Jaroslovsky
U.S. Bankruptcy Judge